

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of

)

)

)

Improving Competitive Broadband  
Access to Multiple Tenant Environments

)

GN Docket No. 17-142

)

)

)

)

**REPLY COMMENTS OF LUMOS NETWORKS INC., LUMOS NETWORKS OF WEST  
VIRGINIA INC., AND LUMOS NETWORKS LLC**

ATTORNEYS FOR LUMOS NETWORKS

Steven Hamula  
Mary McDermott  
One Lumos Plaza  
Waynesboro, VA 22980  
(540) 946-8677

August 22, 2017

## TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY .....	2
II.	THE COMMISSION SHOULD INVESTIGATE AND REMEDY THE ANTI-COMPETITIVE EFFECTS OF LICENSE AND REVENUE SHARING ARRANGEMENTS THAT ARE OFTENTIMES NECESSARY IN ORDER TO GAIN ACCESS TO MTES. ....	3
III.	THE COMMISSION SHOULD PROHIBIT EXCLUSIVE WIRING, MARKETING, AND ROOFTOP ACCESS ARRANGEMENTS THAT MAKE IT DIFFICULT FOR COMPETITIVE BROADBAND PROVIDERS TO SERVE MTES.....	6
IV.	THE COMMISSION SHOULD ENCOURAGE EITHER THE ADOPTION OF NEW MANDATORY ACCESS LAWS OR THE REVISION OF EXISITNG LAWS SO THAT THEY ARE MORE PROCOMPETITIVE.....	9
V.	CONCLUSION.....	11

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of

)

)

)

)

Improving Competitive Broadband  
Access to Multiple Tenant Environments

)

GN Docket No. 17-142

)

)

)

**REPLY COMMENTS OF LUMOS NETWORKS INC., LUMOS NETWORKS OF WEST  
VIRGINIA INC., AND LUMOS NETWORKS LLC**

Lumos Networks Inc., Lumos Networks of West Virginia Inc., and Lumos Networks LLC (collectively “Lumos”), by their attorneys, hereby file these reply comments in response to the FCC’s Notice of Inquiry in the above-referenced docket.<sup>1</sup>

---

<sup>1</sup>See *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Notice of Inquiry, FCC 17-78 (June 22, 2017) (“NOI”).

## **I. INTRODUCTION AND SUMMARY**

As the Commission has correctly acknowledged in its introduction of this NOI, the provision of high-speed Internet access is becoming an ever increasingly important gateway to jobs, health care, education and information allowing innovators and entrepreneurs to create businesses and revolutionize entire industries.<sup>2</sup> To this end, the Commission requested comment on specific ways to facilitate greater consumer choice and enhance broadband deployment in multiple tenant environments (“MTEs”), which are primarily commercial or residential premises such as apartment and condominium buildings, business parks, office buildings, shopping complexes, or other properties that are occupied by multiple tenants.<sup>3</sup>

As a leading fiber based telecommunications provider in the Mid-Atlantic region, Lumos presently has a total of 10,907 fiber route miles/503,616 total fiber strand miles located in Virginia, West Virginia, Pennsylvania, Maryland, Ohio, North Carolina and Kentucky. In addition, Lumos has over 3,400 total “on-net” locations and over 100,000 locations that are considered “near net” or located within one-half mile of its fiber network.

In order to facilitate the deployment of fiber optic facilities necessary for the provision of broadband services, Lumos is oftentimes called upon to install its fiber optic facilities within such MTEs. However, the process of gaining timely access to MTEs on reasonable terms and conditions can sometimes be problematical. Competitive broadband providers like Lumos are

---

<sup>2</sup> NOI at Paragraph 1.

<sup>3</sup> NOI at Paragraph 2.

sometimes excluded altogether from MTEs by building owners or managers. In other situations, building access is unnecessarily delayed, or eventually permitted only on costly, discriminatory and burdensome terms and conditions. These MTE building access barriers serve only to protect incumbent provider market share, inhibit customer choice, and impose much higher costs on competitive broadband providers who seek to connect their networks to prospective customers located in MTEs.

**II. THE COMMISSION SHOULD INVESTIGATE AND REMEDY THE ANTI-COMPETITIVE EFFECTS OF LICENSE AND REVENUE SHARING ARRANGEMENTS THAT ARE OFTENTIMES NECESSARY IN ORDER TO GAIN ACCESS TO MTEs.**

In its NOI, the Commission sought comment from providers on how license and/or revenue sharing agreements affect the development of broadband competition within MTEs.<sup>4</sup> Among other things, the Commission expressed interest in learning how these agreements are structured, the terms and conditions associated therewith, and the frequency with which such agreements are encountered in the marketplace.<sup>5</sup>

Based upon its experience to date, Lumos finds itself in agreement with the comments filed by INCOMPAS, the Fiber Broadband Association and other pro-competition organizations regarding the costly and relentless efforts necessary to win the cooperation of MTE building owners and property managers to allow competitive broadband providers to reach their desired customers. For example, some MTE building owners and/or property managers request a

---

<sup>4</sup> NOI at Paragraph 14.

<sup>5</sup> Id.

percentage of telecommunications gross revenues from competitive broadband providers before said provider is granted MTE building access or is even permitted to market its services to the tenants located within the building.

Lumos recently experienced a prime example of the unreasonableness of such contractual requirements in West Virginia. In this particular situation, Lumos was already providing services to a major medical facility in north central West Virginia when it was asked to provide similar services to one of the medical facility's satellite locations, which was situated in a commercial business park. In order to expedite the provision of service to this satellite location, Lumos contacted the owner of the business park to gain permission to install its telecom facilities to the satellite medical facility. In response to this request, Lumos received verbal authorization to proceed from the owner of the business park and subsequently completed installation of its services.

Shortly thereafter, Lumos was contacted by the business park owner and notified that it would have to enter into a formal Right of Access Agreement governing entrance into the business park. Among other things, the proposed Right of Access Agreement required Lumos to pay a flat annual fee of \$2,500.00 in addition to an annual revenue contribution equal to 5% of the gross revenue derived by Lumos for the provision of service to the satellite medical facility. Not unexpectedly, attempted negotiations with the business park owner regarding these monetary requirements went nowhere, and in fact digressed to the point that the business park owner actually denied Lumos and personnel from the medical facility from accessing the telecommunications room at the facility.

Yet another example involves Lumos' ongoing attempts to successfully complete negotiations on a Communications License Agreement necessary to gain access to a commercial building in downtown Pittsburgh, Pennsylvania. For the past 2 years, Lumos has been engaged in good faith negotiations with three different entities (the building/property manager and two telecom firms) in an effort to gain access to this commercial building. Recently, however, the building ownership contacted Lumos and indicated that management of the building had been turned over to a new telecommunications management group.

In addition, Lumos was informed that all versions of the proposed license agreements that had been previously worked on were now void, and that Lumos would be required to start the negotiations process over again using the template of a new license agreement that was provided shortly thereafter. As a result, Lumos once again finds itself in negotiations on the fourth different version of a license agreement for this MTE building, which is over twice as long as any of the previous versions of said agreement, and includes not only a recurring monthly access fee of \$1,250, but also one-time "access" and "project management" fees of \$1,500 each, all of which are nonetheless deemed necessary in order for Lumos to gain access to the commercial building at issue.

Because securing building access is often time consuming and must begin well before broadband deployment in a given market, competitive providers like Lumos are oftentimes unable to offer service to prospective customers in a timely manner, consequently placing it at a competitive disadvantage relative to incumbent LECs and Cable TV companies. If competitive providers market to customers before gaining building access, they may not be able to serve that

customer at all or may lose the customer in the often lengthy period prior to successfully securing MTE building access.

Nor do the problems competitive providers have in gaining MTE building access end after the provision of service to customers within the MTE building actually begins. Indeed, this entire process can begin again with all of the attendant perils to competition at or near the time the initial MTE building access agreement ends and must either be renewed or renegotiated. Given the fact that the competitive provider is already actively providing service to customers located within the MTE building, competitive providers can sometimes experience problems retaining building access at all or on commercially reasonable terms and conditions.

### **III. THE COMMISSION SHOULD PROHIBIT EXCLUSIVE WIRING, MARKETING, AND ROOFTOP ACCESS ARRANGEMENTS THAT MAKE IT DIFFICULT FOR COMPETITIVE BROADBAND PROVIDERS TO SERVE MTEs.**

As INCOMPAS correctly noted in its initial comments, although there are various forms of exclusivity agreements utilized today in MTE environments, there can be little question that the ones that present the greatest impediment to the continued development of broadband competition are those that provide exclusivity in the areas of inside wiring, marketing and rooftop access.<sup>6</sup> In an exclusive wiring arrangement, providers enter into formal agreements with MTE building owners and/or property managers under which an exclusive right to access and use wiring in a building is gained. In this regard, Lumos is in agreement with INCOMPAS that these exclusive wiring agreements amount to little more than an end run around the

---

<sup>6</sup> See INCOMPAS Comments at pp. 14-18.



Commission's existing cable inside wiring rules, which were created to promote competition and consumer choice.<sup>7</sup> Such arrangements are nothing more than an attempt to avoid the prohibition on exclusive contracts and should clearly be disallowed. In short, Lumos agrees with INCOMPAS that exclusive wiring agreements foreclose competition without providing any tangible benefit to consumers.<sup>8</sup>

With respect to marketing exclusivity, INCOMPAS once again correctly points out that the existence of these agreements not only limits the manner in which competitive information is potentially distributed to tenants, but also has the potential to create confusion about what is and what is not allowed within the MTE building.<sup>9</sup> Thus, even in today's media centered society, in which marketing information is available from multiple traditional and non-traditional sources, Lumos has encountered such marketing restrictions in more than a few of its MTEs service situations. Most often, Lumos is prohibited from providing services beyond the initial tenant being served without the express authorization from the building owner and/or property manager. In other instances, this initial service restriction is combined with an additional prohibition on the marketing or advertising of its services to other tenants located within the MTE building. In either case, however, customer choice is being unnecessarily depressed.

---

<sup>7</sup> INCOMPAS Comments at p. 14.

<sup>8</sup> INCOMPAS Comments at p. 15.

<sup>9</sup> INCOMPAS Comments at pp. 16-17.

Rooftop exclusivity agreements, as INCOMPAS noted in its initial comments, are fundamentally identical to wiring exclusivity agreements.<sup>10</sup> Rooftop exclusivity agreements are primarily utilized by fixed wireless communications providers in an effort to prohibit competitors from accessing space on MTE building rooftops for purposes of establishing or enhancing wireless backhaul services. Because Lumos has historically and continues today to perform work on a contract basis for numerous wireless service providers, the ability to successfully gain access to rooftop cell sites located in MTE buildings is of particular importance.

In Lumos' experience, these agreements can effectively be used to restrict, condition or deny competitive access to a MTE building's rooftop facilities even when such rooftop facilities can efficiently and safely accommodate multiple service providers. Although arguments supporting the retention of such agreements cite to concerns over interference and the potential for damage to occur to existing facilities, these arguments are little more than red herrings intended to divert the Commission's attention away from the anti-competitive consequences of such exclusivity agreements.

Indeed, Lumos, as is the case with the majority of competitive broadband providers, is extremely vigilant when it comes to the potential for interference problems occasioned by the installation of new facilities placed in proximity to an existing provider's equipment in a rooftop setting. In Lumos' view, however, the primary motivation behind the use of rooftop exclusivity agreements is not nearly so altruistic. On the contrary, MTE exclusivity agreements that seek to

---

<sup>10</sup> INCOMPAS Comments at p. 18.

restrict the use of rooftop space by subsequent providers are clearly anti-competitive and should be prohibited in order to foster the continued deployment of advanced broadband services in the United States.

**IV. THE COMMISSION SHOULD ENCOURAGE EITHER THE ADOPTION OF NEW MANDATORY ACCESS LAWS OR THE REVISION OF EXISTING LAWS SO THAT THEY ARE MORE PROCOMPETITIVE.**

As INCOMPAS correctly noted in its comments, the Commission has long recognized the competitive benefits of mandatory access laws, and, when necessary, been willing to examine potential concerns over the use of these laws for anti-competitive means.<sup>11</sup> As the Fiber Broadband Association indicated in its comments, state and local governments historically began to enact mandatory access statutes in an effort to assist providers of cable service in gaining entry into MTEs.<sup>12</sup> These particular statutes were thus intended to ensure that a MTE building/property owner would not bar franchised cable providers from access to MTEs, especially in situations in which the MTE building/property owner had entered into an exclusive service arrangement with another provider.<sup>13</sup>

In other words, mandatory access laws originated during a time when cable service providers were just beginning to offer service, the only incumbent provider was the local telephone company, and MTE building owners were not willing to provide cable service

---

<sup>11</sup> INCOMPAS Comments at pp. 20-21.

<sup>12</sup> FBA Comments at p. 5.

<sup>13</sup> Id.

providers with access to their buildings. In the years that followed, however, these same mandatory access laws have increasingly served only to preserve preferential treatment for cable service providers at the expense of new competitive entrants. Despite this fact, INCOMPAS pointed out that “the Commission has repeatedly declined to preempt such laws, instead encouraging states and local governments to recognize the potential for competitive harm and reform their laws accordingly.”<sup>14</sup>

In a departure from the Commission’s historical reluctance to address this issue, the City of San Francisco took on this issue directly when it adopted Article 52. As INCOMPAS pointed out in its comments, Article 52 is a mandatory access law that actually promotes competitive broadband deployment while at the same time addressing the anti-competitive practice of wiring exclusivity.<sup>15</sup> As INCOMPAS also pointed out, rather than codifying special treatment for franchised cable operators as has historically been the case, Article 52 requires MTE building owners to provide access to all communications providers who qualify under the law.<sup>16</sup> As adopted by the City of San Francisco, Article 52 gives customers in a MTE building the right to select their service provider of choice. Other city governments, desirous of expediting and expanding the deployment of broadband services to their inhabitants, will no doubt seek to follow San Francisco’s lead.

---

<sup>14</sup> INCOMPAS Comments at p. 21.

<sup>15</sup> INCOMPAS Comments at p. 21.

<sup>16</sup> INCOMPAS Comments at pp. 21-22.

Similar to what cities such as Nashville, TN and Louisville, KY have done to facilitate broadband deployment through the adoption of One Touch Make Ready ordinances currently among the subjects under consideration by the Commission in WC Docket No. 17-84,<sup>17</sup> Lumos would respectfully urge the Commission to closely examine what the City of San Francisco has done relative to the implementation of Article 52, which clearly promotes broadband deployment by reducing existing impediments to entry routinely encountered by competitive service providers – especially those seeking to serve customers located in MTE buildings. State and local governments should thus be encouraged to either adopt new laws in the spirit of Article 52 or redraft existing mandatory access laws in a more pro-competitive manner that will foster the continued and timely deployment of broadband services in MTEs.

## **V. CONCLUSION**

For all of the foregoing reasons, Lumos Networks respectfully requests that the Commission adopt appropriate reforms necessary to improve competitive access to Multi-Tenant Environments in accordance with the comments and recommendations contained herein.

---

<sup>17</sup> See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, FCC 17-37, (“April 21, 2017”)(“NPRM”).

Respectfully submitted this 22<sup>nd</sup> day of August, 2017

/s/

---

Steven Hamula  
Mary McDermott  
Lumos Networks  
One Lumos Plaza  
Waynesboro, VA 22980  
Tele: (540) 946-8677